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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 825 25

VALVOLINE OIL COMPANY,

Appellant,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

STATEMENT AS TO JURISDICTION.

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IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Equity

No. 3421

VALVOLINE OIL COMPANY,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent,

AND

INTERSTATE COMMERCE COMMISSION,
Intervening Respondent.

STATEMENT AS TO JURISDICTION.

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the Valvoline Oil Company submits herewith its statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause:

A. The statutory jurisdiction of the Supreme Court to review by direct appeal the final decree complained of is conferred by:

Section 5 of the Commerce Court Act (c. 309, 36 Stat. 543, U. S. C., Title 28, Sec. 45a);

Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, par. (4); U. S. C., Title 28, Sec. 345);

Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 219; U. S. C., Title 28, Secs. 45 and 47a);

Act of Congress, June 29, 1906, Hepburn Amendment, Act to Regulate Commerce, as subsequently amended, U. S. C. A., 49, Section 1, paragraphs 1 (b) and 3, and Section 19a.

B. The statute of the United States, the construction of which is involved herein, is the Act of Congress, June 29, 1906, Hepburn Act, as amended (now known as the Interstate Commerce Act, Part 1 (U. S. C. A. 49). The pertinent sections of the Act read as follows:

> SEC. 1. * * * (1) That the provisions of this part shall apply to common carriers engaged in— * * *
>
> (b) The transportation of oil or other commodity except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; * * *
>
> (3) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. * * *
>
> SEC. 19. (a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this part, * * *

C. The decree sought to be reviewed was entered December 29, 1938, and the petition for appeal was presented to the United States Court for the Western District of Pennsylvania on the 20th day of February, 1939.

D. Plaintiff brought this bill in equity to restrain and enjoin the Interstate Commerce Commission from enforc-

ing its revised Valuation Order No. 26 in a proceeding before the Commission entitled *In the Matter of Valuation of Valvoline Pipe Lines, Valuation Docket No. 1202*, in accordance with the opinion of the Commission holding that the Valvoline Pipe Lines was a common carrier, 47 Val. Rep. 534 and 48 Val. Rep. 10.

The valuation order based on Section 19a of the Interstate Commerce Act applies to all common carriers. The Commission found from the evidence that the Valvoline was a common carrier within the terms of the act and ordered it to submit data for the valuation of its lines.

The evidence shows that the Valvoline operates two refineries in Pennsylvania. In connection therewith and in order to obtain an independent and constant supply of a certain type of crude it maintains a gathering system in Pennsylvania, West Virginia and Ohio for its refineries at Butler, Pennsylvania, and Warren, Pennsylvania. The Valvoline is engaged solely in the refining of crude oil and the marketing of the refined products. For manufacture into such products, it purchases and transports only one type of crude oil, and no oil is purchased unless by petitioner's analysis it is found to meet its predetermined specifications. It does not transport any oil for hire and carries its own oil exclusively. The pipe lines were laid near its refineries and extended to other fields only when necessary to get the type of oil needed to meet its requirements. The Valvoline operates in fields that are served by large common carrier pipe lines and transports a very small fractional part of the oil produced in the Pennsylvania, West Virginia and Ohio fields. It ordinarily pays the uniform price posted by the buying agencies over which it has no control. But when necessary to induce sales by producers and to secure the particular type of crude it uses, it has often paid a premium over the current, posted, uniform price.

The Valvoline Pipe Line is not a corporation but is operated as a department of the Valvoline Oil Company. Neither the oil company nor the pipe line has the right of eminent domain, and has never attempted to exercise such a right. It has never offered to transport oil for hire for any individual or for the public in general. No one has ever asked or demanded transportation service from it.

The pipe line department has been privately operated for over sixty years as an integral part of the refinery. During that time no agency or commission, State or Federal, has ever undertaken to control or supervise its operations until the present proceeding.

With these facts all in evidence without contradiction, the Interstate Commerce Commission found the Valvoline to be a common carrier within the provisions of the Act on the ground that it purchased oil from a large number of owners, and the public interest was therefore affected.

The District Court limited its opinion to the question whether or not the pipe line was subject to the provisions of Section 19a of the Act (Valuation).

It said:

> "We, therefore, decide that the Valvoline is subject to the provisions of Section 19a of the Interstate Commerce Act authorizing the Commission to value its pipe line property and requiring it to cooperate by furnishing relevant data. That is the only question involved in the case. The case does not involve and we, of course, do not decide, any question as to the extent of the other obligations which may have been imposed upon the Valvoline by the Act. The court accordingly reaches the following conclusions of law:
>
> "The Valvoline Oil Company is a common carrier engaged in the interstate transportation of oil by pipe line within the meaning of the Interstate Commerce Act to the extent that it is subject to the provisions of Section 19a of the Act.
>
> "The order of the Interstate Commerce Commission entered June 6, 1938, directing the Valvoline Oil Com-

pany to comply with the provisions of the Commission's Valuation Order No. 26 was within the Commission's statutory powers and was constitutional.—''

By the final decree of the court the petition for an injunction is dismissed and the Valvoline is directed to submit data for the valuation of its properties. The District Court on petition by the plaintiffs entered a decree to stay the effective date of the Interstate Commerce Commission's order pending final determination by the Supreme Court. But by force of other sections of the Act and the definition of the term ''common carrier'', it might also be subject to all the obligations imposed by the Act upon common carriers by pipe line.

The practices which resulted in the pipe line amendment in the Hepburn Act and in the finding that pipe lines in *The Pipe Line Cases,* 234 U. S. 548, 34 S. C. 956, 58 L. Ed. 1459, were common carriers, were not shown to exist by this record.

E. The application of the provisions of the Interstate Commerce Act to pipe lines has not been considered by this Court since 1914, *The Pipe Line Cases, supra.* Since the consideration of these cases, the Act was amended by the Transportation Act, 1920, Sec. 400, 41 Stat. 474. As an amendment to the definition of common carriers the very significant words ''for hire'' have been added.

The appellant's pipe lines were constructed, have been, and are used, as facilities in the refining of crude oil, and are incidental to such use. The interstate transportation of oil by its owner through its pipe line to its refinery to be refined is private transportation. *Pipe Line Cases, supra.* (Uncle Sam Oil Company.) To impose upon such a pipe line the burdens and duties required of common carriers by pipe line for hire is a taking of private property without due process.

The record abundantly shows that producers of crude oil are not required to sell to appellant's refinery; that producers on its lines have access to other modes of transportation of crude oil to markets and may also readily use existing common carrier pipe lines; that appellant must compete generally in a seller's market to obtain adequate supplies of the type of crude oil used by its refinery; that appellant has had and can have no monopoly in either the purchase or transportation of the crude oils produced on its lines.

The questions presented are substantial and of great importance to all refining companies operating private pipe line interstate and to the Interstate Commerce Commission in determining its jurisdiction over such pipe companies for the purposes of valuation, rate regulations and other requirements of the Transportation Act of 1920.

F. The following decisions sustain the jurisdiction of the Supreme Court to entertain an appeal in this case:

United States v. *American Sheet and Tin Plate Co.*, 301 U. S. 402, 57 S. Ct. 804;

B. & O. R. R. Co. et al. v. *United States*, 304 U. S. 58, 58 S. C. 767;

United States v. *Pan-American Petroleum Co.*, 304 U. S. 156, 58 S. Ct. 771;

Escanaba & Lake Superior R. R. v. *United States*, 303 U. S. 314, 58 S. Ct. 556.

G. A copy of the opinion of the District Court is appended hereto.

Respectfully submitted,

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EXHIBIT "A".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

In Equity.

No. 3421.

VALVOLINE OIL COMPANY, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent* and INTERSTATE COMMERCE COMMISSION, *Intervening Respondent*.

SUR FINAL HEARING.

Before Maris, Circuit Judge, and Gibson and Schoonmaker, District Judges.

Opinion of the Court.

December 3, 1938.

MARIS, *Circuit Judge:*

This is a proceeding to enjoin and set aside an order of the Interstate Commerce Commission. The petition sought an interlocutory injunction. A hearing was had pursuant to Section 47, Title 28, United States Code, which by agreement of the parties is to be considered as the final hearing of the cause. From the evidence the court makes the following

Findings of Fact.

The business of the Valvoline Oil Company (hereinafter referred to as the Valvoline) originated in a partnership formed some seventy years ago for the purpose of manufacturing lubricating oil. A small pipe line was constructed near Warren, Pa., through which oil was gathered for shipment in tank cars to the refinery at Edgewater, N. J. Later, a refinery was built at Warren and some of the oil was re-

fined there and some at Edgewater. In 1901 the company was incorporated under the laws of the State of New Jersey and by its charter was authorized to engage in the production, transportation, manufacture, and marketing of petroleum oil and its products, without, however, the right of eminent domain in New Jersey. At the time of its incorporation it was refining about 22,000 barrels of oil per month.

As the demand for lubricating oil grew the pipe line system was gradually extended southward, following the development of new oil fields in Pennsylvania, and in 1909 another and larger refinery was added at East Butler, Pa. The movement of oil in that year amounted to about 55,000 barrels per month. Up to that time all of the oil transported by the Valvoline moved intrastate. Interstate transportation began in 1913 upon the extension of the line from Pennsylvania into West Virginia, and in 1916 the West Virginia-Ohio line was crossed. The last major additions were in 1925 and 1926 when a gathering system serving pools in Ritchie County, W. Va., was purchased and lines were laid in southeastern Ohio. The Valvoline now operates 1,426 miles of pipe line, consisting of 969 miles of 2-inch pipe, 426 miles of 3-inch pipe, and 31 miles of 4-inch pipe. About 50 per cent of the oil transported originates in Pennsylvania, 38 per cent in West Virginia and 12 per cent in Ohio.

Several other oil pipe lines, both common carrier and private, extend through or are in close proximity to the fields served by the Valvoline. The common carrier pipe lines are the National Transit Company and the South-West Pennsylvania Pipe Lines, in Pennsylvania, The Eureka Pipe Line Company, in West Virginia, and the Buckeye Pipe Line Company, in Ohio. None of the companies serves the wells from which the Valvoline receives its oil.

The Valvoline is not a producer of oil. From the inception of the enterprise it has been its practice to purchase all of the crude oil used by it directly from the producers in the field. It carries, therefore, only oil of which it is the owner. For its manufacturing purposes it prefers a selected grade of a light amber color and some of the oils produced along its lines are not satisfactory because too dark or because they contain undesirable ingredients difficult to eliminate

in the refining process. It refuses to buy or admit into its lines oils that do not meet its specifications and the producers thereof must therefore find an outlet through other pipe lines and sales to other refiners. Several instances of rejections of oil by the Valvoline are mentioned in the record. Any producer, however, within reasonable distance of the Valvoline's lines, having oil of the desired quality and not already receiving pipe line service, is afforded a market for his oil through sale to the Valvoline, and if his well is located in Ohio or West Virginia, or in Pennsylvania south of the Butler-Allegheny county line, he receives a premium of five cents per barrel over the posted market price.

In November, 1937, the pipe lines of the Valvoline were serving exclusively 9,020 wells, of which 6,291 were in Pennsylvania, 1,370 in West Virginia, and 1,359 in Ohio. These are generally so-called stripper wells from which the average daily run is 0.20 barrel in Pennsylvania, 0.56 barrel in West Virginia, and 0.25 barrel in Ohio. The oil was then being collected in 2,678 tanks owned by the producers and located on 2,075 farms. Because of the slow accumulation of the oil many of these tanks are drained as infrequently as once a year and in some instances only once in four years. The Valvoline serves actually less than 500 producers or groups but by reason of fractional interests in royalties and leases it has dealings with and accounts to 2,014 royalty owners and 1,751 lease operators for the oil it purchases. These owners and operators have no other present outlet for their oil. According to testimony of record, in the event the Valvoline should refuse to accept it they could receive service from one of the common carrier pipe lines companies provided they were able to tender at least five barrels per day per mile of pipe line extension necessary to make the connection. In view of the fact that the average run of oil from all the wells served by the Valvoline is but little over half a barrel per day, this requirement would undoubtedly deprive many of the producers of a pipe line outlet and market for their oil.

In 1932 economic conditions brought about a curtailment of operations and the refinery at Warren was closed. The Valvoline, instead of limiting its purchases to the quantity

of oil that could be refined at East Butler, continued as before to purchase all oil of suitable grade offered, with the result that it received and has continued to receive an excess of oil over its ability to refine. Having no use for this oil in its own operations it entered into arrangements with the Pennsylvania Refining Company at Karns City, Pa., and with the Ohio Valley Refining Company at St. Marys, W. Va., under which it sells and delivers to those companies the excess of oil over its own requirements. The oil sold to the Pennsylvania Refining Company all originates in Pennsylvania and its movement through the Valvoline's lines is intrastate. At the time of the first hearing before the Interstate Commerce Commission some of the oil sold to the Ohio Valley Refining Company originated in Ohio and moved across the Ohio-West Virginia State line. Sale of the Ohio oil was thereafter discontinued and deliveries to the plant at St. Marys now consists exclusively of oil originating in West Virginia. In both instances the oil is sold at delivered prices which include amounts to cover the cost of transportation.

On December 31, 1934, the Commission issued a general order known as Valuation Order No. 26 requiring all pipeline companies subject to the Interstate Commerce Act (49 U. S. C. c. 1) to prepare and file with the Commission maps, charts and schedules of their property not less than sixty days after written notice from the Commission. The Valvoline was served with such notice in January, 1936, whereupon, it petitioned the Commission to determine its status, asserting that it was not subject to the act. After hearing the Commission, by Division 1, issued a report on February 2, 1937, holding that the Valvoline was engaged in the transportation of oil by pipe line in interstate commerce, that it was a common carrier subject to the provisions of the Interstate Commerce Act and that it should, therefore, comply with Valuation Order No. 26.

Thereafter the Valvoline, having ceased the sale to the Ohio Valley Refining Company of oil transported from Ohio to West Virginia, petitioned for and was granted a rehearing before the full Commission and on June 6, 1938, the Commission filed its report again finding that the Valvoline was a common carrier of oil by pipe line and subject to the pro-

visions of the Interstate Commerce Act. The Commission accordingly affirmed its original report and on the same day entered an order directing the Valvoline to comply with the provisions of Valuation Order No. 26 within ninety days. The present suit was brought to set aside this order. After the commencement of the suit the Commission extended the time for compliance with its order for a further period of ninety days.

Discussion.

The question for determination in this case is whether the Valvoline Oil Company is a common carrier within the meaning of the Interstate Commerce Act to the extent that the Commission may require it to file maps and other information required for the valuation by the Commission of its pipe line property.

The pertinent provisions of the Interstate Commerce Act as amended (49 U. S. C. c. 1), under which the Commission acted, are as follows:

"SECTION 1. (1) That the provisions of this Act shall apply to common carriers engaged in—

(a) • • •

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

• • • • • • • •

(3) The term 'common carrier' as used in this Act shall include all pipe-line companies; express companies; sleeping car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. • • •

SECTION 19a (a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or caused by every common carrier subject to the provisions of this Act. • • •

(e) Every common carrier subject to the provisions of this Act shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier * * *."

The provisions of Section 1 above quoted are as amended by Section 400 of the Transportation Act, 1920. Prior to the passage of that Act Section 1 had been amended by the Act of June 29, 1906, c. 3591, 34 Stat. 584, known as the Hepburn Act, so as to include the following provisions relating to pipe-line companies;

"SEC. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe line, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, * * *."

These provisions remained in the Act until Section 1 was re-arranged and rephrased by the Transportation Act, 1920.

In 1906, when the Hepburn Act was passed, the Valvoline was not engaged in the interstate transportation of oil. It did not undertake that business until several years later. When it did so, it thereby assumed the status, by virtue of the provisions of the Hepburn Act, of a common carrier within the meaning and purpose of the Act. This followed from the very terms of the Act which, as we have seen, provided that the Interstate Commerce Act should apply to any corporation engaged in the interstate transportation of oil by means of pipe lines and that such a corporation should be considered and held to be a common carrier within the meaning and purpose of the Act. In other words, it imposed upon a pipe-line company the status of a common

carrier within the meaning of the Act as a condition of its engaging in the interstate transportation of oil. The Pipe Line Cases, 234 U. S. 548; Pierce Oil Co. *v.* Phoenix Refg. Co., 259 U. S. 125. The fact that the interstate transportation carried on by the Valvoline involved only oil which it itself owned did not operate to exclude it from the provisions of the Hepburn Act since that Act was not restricted to pipe-line companies which were common carriers in a technical sense but included all pipe-line companies engaged in the interstate transportation of oil with the exception of those merely engaged in transporting oil from their own wells to their own refineries for their own use. The Pipe Line Cases, *supra.*

It thus appears that the Valvoline had voluntarily assumed the status of a common carrier within the meaning and purposes of the Interstate Commerce Act prior to the passage of the Transportation Act, 1920. That Act, as we have seen, somewhat changed the language of Section 1 of the Interstate Commerce Act. It provided that the Act should apply to common carriers engaged in the interstate transportation of oil by pipe line and that the term "common carrier" as thus used should include "all pipe-line companies; * * *; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire." We think that this rephrasing of the language of the Hepburn Act worked no change in its meaning. The language used must be construed to mean that all pipe-line companies even though not technically common carriers are to be deemed common carriers as that term is used in the Act and that in addition all individuals or corporations engaged in transporting oil by pipe line as common carriers for hire are to be deemed common carriers within the meaning of the Act even though technically they are not pipe-line companies. It necessarily follows that the Valvoline continued after the passage of the Transportation Act, 1920, to have the status of a common carrier within the meaning of the Interstate Commerce Act.

Section 19a of the Act authorized the Commission to value the property of every common carrier subject to its provi-

sions and requires such common carriers to furnish the Commission with such maps and such other information as it may require in aid of such a valuation. Proceeding under this statutory authority the Commission in the present case ordered the Valvoline to furnish information necessary for the purpose of valuing its property. This order, we think, was within its statutory power and was validly entered against the Valvoline as a common carrier subject to the Commission's jurisdiction.

The Valvoline argues, however, that its operations are so small as compared with the companies involved in the Pipe Line Cases, *supra*, that the application of the Interstate Commerce Act to its business would be unreasonable and arbitrary and would, therefore, deprive it of its property without due process of law in violation of the fifth amendment to the Constitution. It is well settled, however, that consideration of the size and importance of the business to be regulated are addressed to legislative discretion and not to legislative power. Brass *v.* Stoesser, 153 U. S. 391. Furthermore it appears that the business of the Valvoline, while not so extensive as that of the companies involved in the cases referred to, is essentially similar thereto in that it takes all oil meeting its specifications which is offered to it by the owners of the wells connected with its lines and to most of them it offers the only available market for their oil.

It is equally clear that the imposition upon the Valvoline of the status of a common carrier subject to the provisions of the Act as a condition of its engaging in interstate transportation, did not amount to the taking of its property without just compensation in violation of the fifth amendment. We are satisfied that under the Commerce clause the Congress had power to impose such a condition upon those desiring to engage in the interstate transportation of oil by pipe line. See United States *v.* Delaware & Hudson Co., 213 U. S. 366; Atlantic Coast Line *v.* Riverside Mills, 219 U. S. 186; The Pipe Line Cases, *supra;* Edwards *v.* United States, 91 F. (2d) 767.

We, therefore, decide that the Valvoline is subject to the provisions of Section 19a of the Interstate Commerce Act authorizing the Commission to value its pipe-line property

and requiring it to co-operate by furnishing relevant data. That is the only question involved in the case. The case does not involve, and we of course do not decide, any question as to the extent of the other obligations which may have been imposed upon the Valvoline by the Act. The court accordingly reaches the following

Conclusions of Law.

The Valvoline Oil Company is a common carrier engaged in the interstate transportation of oil by pipe line within the meaning of the Interstate Commerce Act to the extent that it is subject to the provisions of Section 19a of the Act.

The order of the Interstate Commerce Commission entered June 6, 1938 directing the Valvoline Oil Company to comply with the provisions of the Commission's Valuation Order No. 26 was within the Commission's statutory powers and was constitutional.

The petition of the Valvoline Oil Company for an injunction enjoining the enforcement of the said order should be dismissed.

A decree dismissing the petition will be entered.